

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation (AMTRAK))

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation, AMTRAK, is violative of Rule 23 of the September 1, 1975 controlling agreement and has unjustly dealt with and damaged Electrician Thomas Buccheri at Kansas City, Missouri when they assessed discipline of dismissal by Notice dated May 25, 1984.

2. That, accordingly, the National Railroad Passenger Corporation, AMTRAK, be ordered to immediately return Electrician Thomas Buccheri to service compensating him from the date of dismissal and continuous as follows: (a) For all time lost until returned to service; (b) Returned to service with seniority rights unimpaired; (c) Made whole for all vacation rights unimpaired; (d) Made whole for pension benefits including Railroad Retirement and Unemployment Insurance; (e) Made whole for actual loss of payment for all health and welfare and insurance benefits on his dependents and himself; (f) Made whole for any other benefits that he would have earned during the time withheld from service; (g) Paid an additional 6% annum compounded annually on the anniversary date of said claim; and, further any record of this investigation and disciplinary action be removed from his personal record file.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant, Thomas Buccheri, was an Electrician in the service of Carrier until he was dismissed on May 25, 1984 as a result of an Investigation. He had been charged with:

"Violation of Rules I and J of the National Railroad Passenger Corporation Rules of Conduct in that at approximately 1:45 am on May 4, 1984 at Kansas City, Mo. Union Station you allegedly were quarrelsome and vicious toward foreman Larry Taylor when Mr. Taylor instructed you not to park nor drive your car on the station platform."

The Investigating Officer held that the charges had been proven.

The Organization at the Investigation and in its brief to this Board raises several procedural arguments. The Carrier originally sent notice of Investigation which scheduled the Investigation eleven days after Claimant had been removed from service and would have been outside for holding an Investigation if an employee is removed from service as was the case here. Apparently realizing its mistake the Carrier rescheduled the Investigation for an earlier time which was within the ten day limit of the appropriate Rule.

The Organization states that the appropriate Rule allows for one postponement without concurrence, but has no provision for moving an Investigation ahead of the original schedule. While it is true that postponement connotes delay, it is equally true that the Rule has no ban against advancement by the Carrier. The timing of the Investigation is the prerogative of the Carrier, subject to the contractual limitations. Only if the advancement prevented the Claimant from having a fair and impartial Investigation could the rescheduling be fatal. The Claimant appeared at the Investigation and nothing in the record indicates that he was prejudiced by the advancement of it.

The Organization also argues that the charges had a lack of specificity that renders them defective. The gravamen of any charge is that it puts the individual charged on sufficient notice that he is able to intelligently understand the charges against him and to prepare a defense to them. Certainly the charges as stated meet this criteria. Employees are aware that quarrelsome and threatening language or conduct toward Supervisors is prohibited.

Claimant was off duty and was ending an evening of entertainment with a girl friend. He testified that he took her to the station to meet his friends and that they intended to offer to go for refreshments for the employees on duty. As he drove onto the property he drove his car through some gravel and placed one wheel on the platform.

After the car had stopped Claimant was approached by a Foreman who told Claimant that he should move his car because he might get stuck in the gravel. A fellow employee was at the scene and he testified that the conversation between Claimant and the Foreman was initially quite peaceful. In the course of the talk, tempers apparently became heated and the conversation degenerated into a shouting match. Profanity was used by the Claimant and may have been used by the Foreman. The testimony of the Foreman was that Claimant threatened his physical welfare.

After the threat was made the Foreman went to a telephone on the platform and called security for the purpose of removing Claimant. Promptly thereafter the Claimant left the property. He was subsequently charged.

The clear impact of the transcript is that the altercation was generated by both parties. This does not excuse the fact that Claimant responded to the Foreman's order to move the car with profanity and later with a threat. Even if he had been found not to be at fault, he should be aware that his duty was to respond to the order. It is of no incident that he was not on duty. He was on Carrier leased property and was clearly subject to Carrier Supervision while he and his vehicle were parked near the platform.

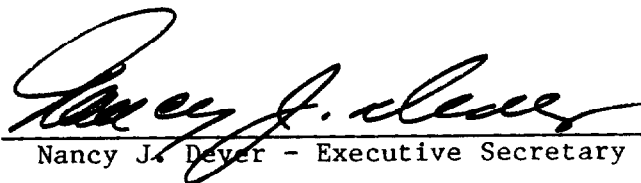
The record does not show that Claimant was provoked by the Foreman or that the order to move the car was not legitimate. We hold that his actions subjected him to discipline upon the proof of the charges which was done. However, the fact that the record evidences that the accelerating level of intensity of the altercation was mutual goes to the extent of the discipline. A fellow employee testified that Claimant had stated that he had no intention of fighting the Foreman. What is revealed by the transcript is macho posturing by both parties to the altercation. Based upon these circumstances we find that time out of service without compensation is adequate discipline for the event.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1986.